

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Federal Trade Commission,
Plaintiff

vs.

Ideal Financial Solutions, Inc., et al.,
Defendants

Case No.: 2:13-cv-00143-JAD-GWF
**Order Granting in Part Motion for
Summary Judgment
[Doc. 170]**

This trade-enforcement action alleges a wide-ranging fraud scheme in which Ideal Financial Solutions, Inc., through a host of shell entities, purchased consumer bank and credit card information from payday-loan vendors and charged unwitting consumers a fee for financial services never provided. The Federal Trade Commission sued Ideal, its related entities, and the people who control them. Defaults and consent judgments have been entered against the majority of the defendants, and the FTC now moves for summary judgment against the remaining defendants on all claims. Having evaluated the admissible evidence, I grant summary judgment on liability, but I find that a flaw in the FTC's evidentiary submission precludes summary judgment on the remedies the FTC seeks.

I. Procedural History

The FTC filed this action against Ideal Financial Solutions, Inc.; Ascot Crossing, LLC; Bracknell Shore, Ltd.; Chandon Group, Inc.; Avanix, LLC; Fiscal Fitness, LLC (the Corporate Defendants); and Steven Sunyich, Michael Sunyich, Chris Sunyich, Shawn Sunyich, Melissa Sunyich Gardner, Kent Brown, and Jared Mosher (Individual Defendants),¹ alleging they orchestrated a fraud scheme using unfair billing practices (count 1), deceptive billing practices (count 2), and deceptive statements that consumers authorized payment (count 3), all in violation of the FTC Act, 15 U.S.C. § 45 *et seq.*² Shortly after filing the complaint, the FTC successfully moved for a temporary restraining order—followed by a preliminary injunction—under which it seized

¹ Doc. 1. Jared Mosher was brought into this action by the amended complaint. Doc. 32. Although the docket also reflects the presence of a “Shane Mosher,” he does not appear in either version of the complaint.

² Doc. 32.

1 financial assets.³ The court appointed a receiver to oversee the operation of the Corporate
 2 Defendants.⁴ A clerk's default was entered against all of the Corporate Defendants,⁵ and the FTC
 3 entered consent judgments against Kent Brown and Shawn Sunyich,⁶ leaving Steven Sunyich, Chris
 4 Sunyich, Michael Sunyich, Melissa Sunyich Gardner, and Jared Mosher⁷ as the only active
 5 defendants.

6 The FTC now moves for summary judgment on all claims against these remaining
 7 defendants.⁸ Only Steven Sunyich, Michael Sunyich, Chris Sunyich, and Melissa Sunyich Gardner
 8 responded to the motion.⁹ Steven Sunyich avers that the FTC has filed "mountains of worthless
 9 documents . . . in an attempt to hide the simple truth, THEY DO NOT HAVE A CASE" and that a
 10 number of the funds seized belong to a non-party.¹⁰ Chris Sunyich argues that the FTC has
 11 "burdened" the parties with excessive documents but that the FTC cannot point to any wrongdoing
 12 that specifically implicates him or any of the companies he controls.¹¹ Michael Sunyich's one-page
 13 response states baldly that "there is absolute genuine dispute to ALL claims made by Plaintiff
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16 ³ Docs. 9, 18, 49.

17 ⁴ *Id.*

18 ⁵ Docs. 190, 191.

19 ⁶ Docs. 192, 193.

20 ⁷ Court mailings to Jared Mosher have been returned undelivered for nearly a year as he has
 21 apparently not updated his mailing address. *See* Docs. 199, 203, 205, 208, 215.

22 ⁸ The motion was also brought against Brown and Shawn Sunyich, and against the Corporate
 23 Defendants. The claims against Brown and Shawn Sunyich have been resolved by consent
 24 judgment. Docs. 192, 193. When default was entered against the Corporate Defendants, their
 liability was established. *See Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (*per*
curiam) (a party's default conclusively establishes its liability, but it does not establish the amount of
 damages); *accord Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

25 ⁹ Docs. 180, 181, 183, 184. After the FTC filed its motion, all defendants received a notice
 26 informing them that, to properly oppose the motion, they must file opposing points and authorities,
 admissible evidence, and a statement of facts under Local Rule 56-1. Doc. 179.

27 ¹⁰ Doc. 180 at 1-2.

28 ¹¹ Doc. 183 at 1-2.

1 Federal Trade Commission.”¹² Like Michael’s submission, Melissa Sunyich Gardner’s two-page
 2 argument contends there is “genuine dispute to ALL claims made by Plaintiff Federal Trade
 3 Commission,” refers to her now-denied motion to dismiss, and requests that “both Plaintiff and
 4 Defendants should be ordered to work together in a productive manner to create guidelines and
 5 policies in a very unregulated misunderstood industry.”¹³ On this briefing, I now consider the state
 6 of the evidence.

7 **II. The State of the Evidence**

8 The court may only consider admissible, properly authenticated evidence on summary
 9 judgment.¹⁴ Authentication is a “condition precedent to admissibility” that is satisfied by “evidence
 10 sufficient to support a finding that the matter in question is what its proponent claims.”¹⁵ To properly
 11 present or oppose a summary judgment motion supported by admissible evidence, litigants must
 12 comply with this district’s Local Rule 56-1, which requires “a concise statement setting forth each
 13 fact material to the disposition of the motion, which the party claims is or is not genuinely in issue,
 14 citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission,
 15 or other evidence upon which the party relies.”¹⁶ It is not enough to simply attach admissible
 16 evidence to the motion; that evidence must be properly presented. Parties who fail to provide
 17 pinpoint citations to evidence supporting assertions made in a statement of disputed or undisputed
 18 facts risk exclusion of that evidence. The court is not required to “paw over files without the
 19 assistance from the parties” in order to evaluate their contentions.¹⁷

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 21 ¹² Doc. 181 at 1; *see* Doc. 190.

22 ¹³ Doc. 184 at 1; *see* Doc. 190.

23 ¹⁴ *Orr v. Bank of Am.* 285 F.3d 764, 774 (9th Cir. 2002).

24 ¹⁵ *Id.* (citations omitted).

25 ¹⁶ D. Nev. L.R. 56-1.

26 ¹⁷ *Id.* at 774–75 (9th Cir. 2002). I consider the admissible evidence submitted elsewhere in
 27 the record as it relates to each defendant. I will not, however, dig through each of the hundreds of
 28 docket entries to hunt for evidence to support defendants’ arguments. *See, e.g., Nw. Nat’l Ins. Co. v. Baltes*, 15 F.3d 660, 662 (7th Cir. 1994) (“District judges are not archaeologists. They need not excavate masses of papers in search of revealing tidbits.”); *see also United States v. Dunkel*, 927 F.2d 955 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”).

1 Even where there has been a complete failure to respond in accordance with a local rule,
 2 however, I may not grant a summary-judgment motion merely because it is (effectively) unopposed.
 3 I must consider whether the undisputed facts warrant entry of judgment against the non-moving
 4 parties.¹⁸ Where, as here, summary judgment is sought against pro se defendants, I consider all of
 5 their supported facts offered in motions and pleadings if made on personal knowledge and under
 6 penalty of perjury.¹⁹ And I construe all evidence in the light most favorable to the defendants.²⁰

7 **A. Defendants' Evidentiary Record**

8 None of the four answering defendants has submitted any admissible evidence in his or her
 9 brief response to the motion for summary judgment²¹ or made a colorable attempt to comply with
 10 Local Rule 56-1. Steven Sunyich references two exhibits: (A) the FTC's expert report by Lisa T.
 11 Wilhelm, which he offers only to discredit it as "very ONE SIDED"²² and (B) Steven's unsigned,
 12 undated, unauthenticated letter response to that report.²³ None of this is reliable evidence on
 13 summary judgment, so I choose to disregard it.²⁴ But looking through the entire record as I am
 14 obligated to do with these pro se defendants, I note that Steven's answer contains seven properly
 15 authenticated affidavits; I consider them and incorporate them below in my description of the
 16 undisputed material facts.²⁵

17 **B. The FTC's Evidence**

18 The FTC's multitude of exhibits—which span approximately 1,880 pages— are not all
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20 ¹⁸ See *Heinemann v. Setterberg*, 731 F.3d 914, 917 (9th Cir. 2013).

21 ¹⁹ *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (citation omitted).

22 ²⁰ See *FTC v. Stefanchick*, 559 F.3d 924, 927 (9th Cir. 2009).

23 ²¹ See Docs. 180, 181, 183, 184.

24 ²² Doc. 180 at 2; Doc. 180-1 (formatting in original).

25 ²³ Doc. 180-2.

26 ²⁴ See Fed. R. Evid. 901(b)(4).

27 ²⁵ Doc. 84 at 12–35. These are the affidavits of the Sunyiches, Doc. 84 at 12–23; Brian
 28 Godfrey, Doc. 84 at 24–25; Robert Dahl, Doc. 84 at 26–27; Paul Currie, Doc. 84 at 28–29; Joseph
 Montabano, Doc. 84 at 30; Terri Bunker, Doc. 84 at 31–32; and Robert Taylor Yates, Doc. 84 at
 33–35.

admissible. The FTC introduces many of its exhibits by relying on affidavits from FTC employees or low-level employees of subpoenaed companies, who state that certain documents were produced in response to subpoenas or seized from Ideal's workplace. But the affidavits themselves do not specify the attached documents, nor has the FTC attached any supplemental declaration attesting to their authenticity. In addition to finding those documents lack foundation, I also decline to find that the particular characteristics of these documents meet the admissibility requirements of Federal Rule of Evidence 901(b)(4).

Finally, I disregard Wilhelm's expert report, attached at PX34.²⁶ For an expert opinion to be considered on summary judgment, its contents must be sworn under penalty of perjury to be true and correct. Courts in the Ninth Circuit "have routinely held that unsworn expert reports are inadmissible."²⁷ Wilhelm's report is signed but unsworn.²⁸ I therefore disregard it.

C. Undisputed Facts

The evidence I do find admissible and exercise my discretion to consider leaves me with the following undisputed facts:

1. *Ideal Financial Solutions and Its Unauthorized Charges to Consumer Accounts*

Ideal Financial Solutions is a publicly traded corporation that has been in business for more than 20 years.²⁹ It purchased consumer financial account numbers and data or leads directly from data providers, often in the form of consumer payday-loan applications that online payday lenders

²⁶ Doc. 175-3.

²⁷ *Harris v. Extendicare Homes, Inc.*, 829 F. Supp.2d 1023, 1027 (W.D. Wash. 2011); see also *Ridgel v. United States*, 2013 WL 2237884, at *2-3 (C.D. Cal. May 21, 2013); *Shuffle Master, Inc. v. MP Games LLC*, 553 F. Supp. 2d 1202, 1210-11 (D. Nev. 2008) (collecting cases); *King Tuna, Inc. v. Anova Food, Inc.*, 2009 WL 650732, at *1 (C.D. Cal. Mar. 10, 2009) ("It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment" and that "to be competent summary judgment evidence, an expert report must be sworn to or otherwise verified, usually by a deposition or affidavit.").

²⁸ Doc. 175-3 at 31.

²⁹ Doc. 84 at 19 ¶ 51.

1 had rejected.³⁰ Ideal's data providers collected data from thousands of third-party websites, most of
 2 which were unknown to Ideal.³¹ Ideal then imported that information into its consumer databases
 3 and automatically charged a fee (generally around \$30) to the consumers' credit cards or debited
 4 their bank accounts.³² There is no evidence that Ideal charged these accounts with the account
 5 holders' authorization.³³

6 For example, Ideal purchased hundreds of thousands of payday-loan applications from
 7 LeapLab, LLC and charged millions of dollars to these consumers' bank accounts during at least four
 8 charging campaigns.³⁴ LeapLab's chairman and CEO, John Ayers, testified that Ideal's consumers
 9 could not have authorized Ideal's charges because LeapLab itself acquired the consumers'
 10 information from other data providers and networks of thousands of payday loan websites
 11 (collectively, the publishers)—the vast majority of which were unknown to even LeapLab.³⁵ Ayers
 12 testified that for consumers to have authorized the charges Ideal made, the publishers would have
 13 been required to display disclosures about Ideal's products, which the publishers did not do.³⁶

14 Many of Ideal's victims did not purchase Ideal's products or know of Ideal, its family of
 15 companies, or its products prior to discovering Ideal's charges on their statements.³⁷ Consumers

17 ³⁰ PX2 at ¶ 24; PX43 at 16:12–17:24; 20:8–19, 25:8–26:14, 32:16–33:4, 33:9–12, 35:5–16;
 18 PX43A at 1–5; PX44 at 10:7–11:22, 51:25–53:22. The FTC submits its evidence with the preface
 19 “PX” to signify specific exhibits. I use these prefaces when referring to the evidence the FTC offers
 20 in support of its motion. These exhibits are contained in the docket in Documents 171–178.

21 ³¹ PX43 at 36:12–38:20; PX44 at 43:3–45:14, 46:10–15, 58:5–14.

22 ³² Doc. 14 at 12; PX37 at 224:6–14, 226–8–17; PX39 at 143:8–19, 247:22–248:1; PX40 at
 23 141:6–144:17; PX44 at 25:2–26:17, 57:15–25; PX105 at ¶¶ 3–4.

24 ³³ Doc. 14 at 10:1–3, 11:8–13, 12:10–11, 26–28, 14:22–27; PX1:D at 4–5; PX37 at 37:20–22,
 25 60:18–61:15, 79:17–19, 126:17–18, 137:4–138:6, 144:1–4, 144:9–146:11, 152:17–22; PX37:A at 2;
 26 PX38 at 79:22–80:6, 142:3–12; 164:8–20, 165:13–166:1; PX38 at 46:24–47:6, 49:15–21, 52:6–11;
 27 PX39 at 127:10–19, 132:16–22, 145:7–21; 224:25–225:3.

28 ³⁴ PX33 at 25; PX39 at 98:12–15; PX43 at 15:15–17, 17:5–9.

³⁵ PX43 at 35:2–7, 36:8–37:7, 38:2–39:10.

³⁶ PX43 at 35:21–38:20; PX44 at 57:19–25, 59:4–21, 62:15–63:2.

³⁷ PX7 at ¶¶ 6–7; PX8 at ¶¶ 13–14; PX9 at ¶¶ 3–5, 8; PX10 at ¶¶ 3, 5, 6; PX11 at ¶ 4; PX12
 at ¶¶ 3, 10; PX13 at ¶ 4; PX14 at ¶¶ 2–3, 7; PX15 at ¶ 3; PX16 at ¶¶ 2–5; PX17 at ¶¶ 2–3; PX18 at
 ¶¶ 2, 5; PX19 at ¶ 3; PX20 at ¶¶ 3–5; PX21 at ¶¶ 3–4, 6; PX22 at ¶¶ 3–8; PX23 at ¶¶ 4–6; PX24 at

1 often complained to Ideal or its third-party call centers about unauthorized charges using customer-
2 service phone numbers placed on their bank statements by the payment processors.³⁸

3 Ideal's customer service agents were instructed to tell consumers that the consumers had
4 authorized the charges to their accounts when applying for a payday loan online; the agents were
5 unable, however, to tell the consumers on which website they provided that authorization or give
6 them other proof of authorization.³⁹ Customer-service agents followed scripts prepared by Michael
7 and Chris Sunyich to respond to complaints and questions like "Why was I charged?" and "How did
8 you get my information?"⁴⁰ In an August 2011 email to the agents, Michael Sunyich explained that
9 the consumers asked these questions because "YOU are the first time they are hearing about [our
10 products]."⁴¹

11 According to Jared Mosher, Chris Sunyich, and Michael Sunyich, Ideal offered an online
12 "member center" with financial calculators, a financial counseling and bill pay service, and loan-
13 protection products,⁴² although Shawn Sunyich confessed that these products were not actually
14 available.⁴³

15 Ideal's banks and processors routinely terminated its merchant accounts for high chargeback
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19 ¶¶ 3-7; PX25 at ¶¶ 5-7, 16; PX26 at ¶¶ 3-5; PX28 at ¶¶ 2-4; PX29 at ¶¶ 3, 9; PX30 at ¶¶ 8-9; PX31
20 at ¶¶ 3-4.

21 ³⁸ Doc. 84 at 14, ¶¶ 45-46; PX1 at ¶¶ 122-123; PX7 at ¶ 7; PX8 at ¶¶ 13-14; PX9 at ¶ 6;
22 PX10 at ¶ 5; PX13 at ¶ 5; PX14 at ¶¶ 5, 7; PX15 at ¶¶ 4-6; PX16 at ¶ 5; PX18 at ¶¶ 5-6; PX19 at ¶¶
3-4; PX20 at ¶¶ 5-7, 12; PX21 at ¶¶ 3-5; PX23 at ¶ 5; PX24 at ¶ 8; PX25 at ¶¶ 4, 9, 17; PX26 at ¶
5; PX37 at 40:10-21.

23 ³⁹ PX1 at ¶¶ 116-118; PX7 at ¶¶ 4, 6, 8; PX8 at ¶ 26; PX9 at ¶ 6; PX10 at ¶ 5; PX15 at ¶ 4;
24 PX16 at ¶ 5; PX20 at ¶¶ 7, 12; PX20:D at 2; PX23 at ¶ 5; PX24 at ¶ 8; PX25 at ¶ 10; PX26 at ¶ 27;
PX29 at ¶¶ 5-6, 11; PX30 at ¶ 7; PX38 at 96:18-97:9; PX40 at 66:3-16.

25 ⁴⁰ PX2 at ¶¶ 8-11; PX2:D at 1-2; PX2:E at 2; PX39 at 235:11-236:12; PX39:A at 9.

26 ⁴¹ PX40 at 92:12-21; PX40:A at 1-2.

27 ⁴² PX8 at ¶ 8; PX37 at 24:7-13, 157:16-19, 182:23-183:2, 184:22-24, 226:18-227:14; PX39
28 at 45:9-45:20, 108:8-19, 222:17-19; PX40 at 117:1-3. PX44 at 18:11-18.

⁴³ PX2 at ¶ 27.

1 and return rates.⁴⁴ Ideal itself calculated that, in the second quarter of 2010, its chargebacks and
 2 refunds made up at least 25.5% of its total revenue and trended upwards.⁴⁵ Documents obtained by
 3 the FTC from one of Ideal's processors, as well as other processor reports found among Ideal's files,
 4 show that return rates from various campaigns during 2010 and 2011 were above 50%.⁴⁶ By May
 5 2010, processors had shut down more than 20 of Ideal's merchant accounts.⁴⁷ In 2011, a processor
 6 terminated several other accounts belonging to Ideal.⁴⁸ By May 2012, the Ideal organization lost four
 7 more accounts.⁴⁹ In September 2012, Ideal's CFO and General Counsel, Scott Manson, candidly
 8 admitted in an email to Kent Brown, "I would be surprised if [the merchant accounts] lasted more
 9 than a month. Using crappy data to charge people for a service they do not want. I am always
 10 amazed that the returns are not 100%."⁵⁰

11 Ideal's billing records indicate that it attempted to take tens of millions of dollars from more
 12 than a million consumers between January 2009 and January 2013.⁵¹ Chargebacks and refunds
 13 resulted in the return of only a portion of this amount to consumers.⁵² Consumers suffered additional
 14 harm in the form of insufficient funds fees and other bank assessments caused by the unexpected
 15 charges, unpaid refunds, and the general nuisance of contesting the charges.⁵³

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 17 ⁴⁴ PX38 at 82:4-14, 85:1-14, 86:5-15; PX41 at 45:15-22, 91:17-23; PX41:A at 1-3; PX60 at
 18 1.

19 ⁴⁵ PX1 at ¶ 16; PX1:D at 71.

20 ⁴⁶ PX1 at ¶¶ 154, 156-158, 166; PX1:HH at 5, PX1:XX at 4.

21 ⁴⁷ PX38 at 188:11-190:2; PX38:A at 24-26.

22 ⁴⁸ PX1 at ¶¶ 163-166, 169; PX1:HH; PX1:ZZ at 1, 6.

23 ⁴⁹ PX80 at ¶ 7; PX80:E.

24 ⁵⁰ PX80 at ¶ 7; PX80:F; PX105 at ¶ 8.

25 ⁵¹ See PX33 at ¶¶ 22, 23(d).

26 ⁵² See PX33 at ¶¶ 22, 23(d). See PX7 at ¶ 10; PX19 at ¶ 3; PX21 at ¶ 6; PX26 at ¶ 22; PX27
 at ¶¶ 8-9, 14; PX31 at ¶ 7; PX37 at 229:22-230:19; PX40 at 53:20-54:4.

27 ⁵³ PX7 at ¶ 10; PX11 at ¶ 10; PX12 at ¶¶ 10, 13; PX13 at ¶¶ 7, 9; PX14 at ¶¶ 4, 7; PX16 at ¶
 28 PX19 at ¶¶ 3, 7; PX20 at ¶ 24; PX21 at ¶ 6; PX23 at ¶ 7; PX25 at ¶¶ 5-7, 15, 16; PX26 at ¶ 22;
 PX27 at ¶¶ 8-9, 14; PX28 at ¶ 5; PX29 at ¶ 10; PX30 at ¶¶ 5, 10; PX31 at ¶ 7; PX37 at
 229:22-230:19; PX39 at 157:9-19, 162:12-22; PX40 at 53:20-54:4.

1 Prior to 2010, Ideal processed charges through Ideal FSI merchant accounts.⁵⁴ Beginning in
 2 2010, Ideal used its other shell companies to purchase consumers' account data and charge their
 3 accounts.⁵⁵ After purchasing the account numbers, Ideal batched them, assigned each batch to a shell
 4 and merchant account, and directed a payment processor to charge that account.⁵⁶ Ideal recorded
 5 consumer data, the batching, and information about the charges in its consumer databases.⁵⁷ Ideal
 6 recruited its employees or their friends or relatives to serve as the shells' straw officers; they then
 7 filed formation documents, registered DBAs, and opened merchant and bank accounts for the
 8 shells.⁵⁸ In addition, Ideal assigned each a mailing address (typically a virtual office address shared
 9 with the other shells) and email address, both of which forwarded to Ideal FSI's employees.⁵⁹ Ideal
 10 also created websites for the shells, acquired phone numbers, and hired a third-party call center to
 11 respond to consumer complaints.⁶⁰ Ideal's customer service agents often used the DBA
 12 "Membership Care" to respond to consumer complaints and followed the same customer service
 13 scripts.⁶¹ Ideal also opened dozens of bank accounts for the shells, with Ideal FSI's officers and
 14 employees as signatories.⁶² It also funneled the proceeds from charging campaigns to accounts in the

17 ⁵⁴ PX1 at ¶¶ 16, 23, 147; PX1:D at 5; PX1:UU.

18 ⁵⁵ See, e.g., Doc. 14 at 12:21–13:3–5; PX1 at ¶¶ 92, 112; PX1:DD; PX1:NN at 1; PX44 at
 19 31:22–34:9. PX43 at 278, 27:18–21; PX38:A at 32–33; PX80 at ¶ 7; PX80M; PX105 at ¶¶ 3–4.

20 ⁵⁶ See PX1:HH at 5–6.

21 ⁵⁷ PX33 at ¶¶ 5–8; PX37 at 196:13–14; PX38 at 50:7–12; PX44 at 25:2–27:8.

22 ⁵⁸ PX44 at 33:6–37:19; PX41 at 31:12–34:9, 35:9–15, 43:5–44:7, 44:17–19, 122:16–25,
 23 192:12–15; PX40 at 36:25–37:16; Doc. 84 at 24, ¶¶ 9–10; Doc. 84 at 26, 11; Doc. 84 at 28, ¶¶
 10–11; Doc. 84 at 31, ¶¶ 5–6, 11; PX80 at ¶ 7; PX80:A; PX80:B.

24 ⁵⁹ PX1 at ¶¶ 18, 24, 30, 87; PX1:E at 1–2; PX1:J; PX1:Z; PX6 at ¶ 6; PX6:C; PX80:H at 1–2;
 25 PX80 at ¶ 7.

26 ⁶⁰ Doc. 84 at 18, ¶¶ 41, 46; PX1 at ¶¶ 18, 84, 90, 109, 111–115; PX1:CC, KK-PP; PX7 at ¶¶
 3–7; PX37 at 40:16–17; PX40 at 76:23–77:20, 126:9–11; PX44 at 13:2–9, 16:1–4, 18:11–18.

27 ⁶¹ PX8 at ¶ 16. PX12; PX17; PX40 at 62:23–63:2, 63:7–22, 125:1–126:8, 126:12–20; PX41
 28 at 70:5–10.

⁶² PX2 ¶ 20; PX2:I; PX80 at ¶ 7; PX80:B PX80:K.

names of various shells.⁶³ Ideal at times created multiple shells, opened related bank accounts, and registered batches of DBAs within a few days' time.⁶⁴

2. *Ideal FSI: The Operational Center of the Business*

Defendant Ideal FSI, a public company, was the operational center of the organization.⁶⁵ Steven Sunyich, his son Chris Sunyich, and Jared Mosher had ultimate authority over Ideal FSI and the Ideal common enterprise.⁶⁶ Kent Brown managed the accounting and merchant accounts and oversaw other day-to-day operations.⁶⁷ Michael Sunyich and Shawn Sunyich oversaw customer service and business development.⁶⁸ Rob Dahl and Paul Currie served as Ideal FSI's directors, but they also served as signers for certain shells.⁶⁹ Ideal FSI leased office space in St. George, but it frequently used a Las Vegas virtual address on business filings.⁷⁰ At least fourteen of the shells are wholly owned subsidiaries of Ideal FSI.⁷¹

At the St. George office, a small group of employees managed administrative and accounting functions for the shells.⁷² Toni LeMond and Sharon Martin kept track of shell company names,

⁶³ PX2 at ¶¶ 18-19; PX2:H at 9-11; PX1 at ¶ 43; PX80 at ¶ 7; PX80:I; PX80:J; PX80:O-R.

⁶⁴ PX1 at ¶¶ 11, 13, 14, 70, 74, 76, 55, 103, 163-66; PX1:A at 13, 25, 31; PX1:B at 1-3, 14-18, 21, 27; PX1:M at 1, 3, 5, 7, 9, 11, 32-39, 71-75; PX1:P; PX1:R-S; PX1:HH at 1-5.

⁶⁵ See PX1 at ¶ 16; PX1:D at 2, 40, 42, 65; PX8 at ¶¶ 4-11; PX37 at 94:14-21, 181:22-24; PX38:A at 11-13 (Dep. Ex. 41); PX41 at 131:2-9.

⁶⁶ Doc. 14 at 9:24-25, 10:23-24, 13:3-7, 13:22-23; PX2 at ¶ 15; PX2:G; PX3 at ¶ 6; PX3:A; PX3:B; PX40 at 37:7-9; 61:10-17, 67:1-5, 136:15-16; PX44 at 30:14-31:21, 39:7-40:4; PX105 at ¶¶ 3-4.

⁶⁷ Doc. 14 at 13:19-20, 13:24-27; PX3 at ¶ 6; PX3:A; PX3:B; PX37 at 179:14-21; PX40 at 37:10-11; PX41 at 64:17-22; PX44 at 15:19-25, 20:11-14, 39:18-22; PX80 at ¶ 7; PX80:B; PX105 at ¶¶ 3-4.

⁶⁸ Doc. 14 at 12:6-7, 12:18-20; PX1 at ¶ 25; PX1:F at 5-6; PX8 at ¶ 8; PX38 at 136:10-14, 145:6-13; PX39 at 100:25-101:5; PX37 at 72:23-25; PX40 at 13:20-24; PX40:A at 1; 8-9; PX105 at ¶¶ 3-4.

⁶⁹ Doc. 84 at 26, ¶¶ 10-11, 28-29 at ¶¶ 10-11; PX1 at ¶¶ 13, 15-16; PX1:A at 61-62; PX1:C at 1, PX1:D at 42-43, 46.

⁷⁰ PX1 at ¶ 30; PX1:J.

⁷¹ Doc. 41 at 1; Doc. 84 at 5, ¶ 16; PX1 at ¶¶ 16, 22-23; PX1:D at 40; PX41 at 148:11-149:3.

⁷² Doc. 14 at 2:16-3:7; PX2 at ¶ 4; PX105 at ¶¶ 3-4.

DBAs, merchant accounts, and addresses as well as refunds for complaining consumers.⁷³ Brown managed merchant and bank accounts.⁷⁴ Terri Bunker assisted Brown with accounting.⁷⁵ Brian Jensen set up domain names and websites for shell companies.⁷⁶ Brian Godfrey managed Ideal's consumer database, processed refunds, and carried out the individual defendants' instructions for how to split up consumer lists and submit information to payment processors.⁷⁷ Michael Betts provided day-to-day management of Ideal's customer service.⁷⁸ Josh Rodgers headed "reputation management," including responding to written complaints from consumers and the Better Business Bureau.⁷⁹

3. *Individual Defendants*

a. *Steven Sunyich*

Defendant Steven Sunyich was Ideal FSI's CEO from 2004 to 2013.⁸⁰ He also served as the registered agent for at least two shells: Newline Cash, LLC and Funding Guarantee, LLC.⁸¹ Steven recruited straw officers for shell companies and arranged the purchase of consumers' account information from data providers.⁸² Additionally, Steven controlled Ideal's finances as a signatory on many of the scheme's bank accounts.⁸³ Steven admitted to knowing about Ideal's unauthorized

⁷³ PX40 at 57:24–58:10; PX41 at 64:13–22; 115:16–20; 125:9–15; PX80 at ¶ 7; PX80:H.

⁷⁴ PX44 at 39:18–22; PX80 at ¶ 7; PX80:B.

⁷⁵ Doc. 84 at 31, ¶¶ 5–9; PX42 at 36:25–37:8.

⁷⁶ PX44 at 13:2–20, 15:19–20:16.

⁷⁷ PX37 at 225:1–8; PX38 at 44:9–19; PX40 at 58:24–59:25; 61:10–13.

⁷⁸ PX37 at 72:23–25, 181:10–11; PX38 at 145:6–13; PX39 at 100:19–101:5.

⁷⁹ PX37 at 181:21–22; PX39 at 99:5–7, 238:1–10.

⁸⁰ Doc. 84 at ¶ 5; PX1 at ¶ 54; PX1:A at 6; PX1:D at 42; PX38 at 34:4–9; PX39 at 42:2–4.

⁸¹ PX1 at ¶¶ 77–78, PX1:T at 1; PX1:U at 1; PX41:A at 14.

⁸² PX38 at 77:8–14; PX39 at 44:8–18, 45:2–46:3; PX41 at 31:19–34:15, 35:16–19; PX44 at 30:14–31:1, 31:10–13, 34:12–21, 39:7–40:4. *See* Doc. 84 at 24–35.

⁸³ PX1 at ¶ 16, 55; PX1:D at 46; PX1:M at 1–27, 37–42, 51–52, 54–63, 66–67, 77–78; Doc. 84 at 7, ¶ 28.

1 charges and received regular reports of Ideal's return and chargeback rates that topped 50 percent.⁸⁴
 2 He knew that payment processors repeatedly shut down Ideal's merchant accounts because of the
 3 high rates⁸⁵ and that, because of Ideal's high return rates, processors placed Chris Sunyich on a
 4 terminated merchant list, i.e., a blacklist maintained by processors and banks.⁸⁶ In addition, Steven
 5 received regular reports from Ideal's third-party call centers about the high volume of complaint calls
 6 and knew that consumers were complaining about Ideal to their banks and processors.⁸⁷ He knew
 7 that Ideal's customer-service agents told complaining consumers that the consumers had authorized
 8 the charges.⁸⁸ Steven discussed Ideal's return rates, complaint calls, and high number of refunds
 9 with Chris Sunyich and other Ideal employees.⁸⁹ Additionally, Steven knew of Ideal's problems with
 10 law enforcement and drafted a letter to the Utah Division of Consumer Protection for AvaniX.⁹⁰
 11 Although Steven blames Mosher for Ideal's unlawful charging campaigns, he admits that, even prior
 12 to Mosher's arrival, Ideal experienced terminated merchant accounts and consumer complaints and
 13 engaged in blind billing.⁹¹ When Steven hired Mosher, he believed that Mosher was running an
 14 illegal business but hired him because "Jared was making a boat load of money as a broker."⁹²

15 ***b. Chris Sunyich***

16 Chris Sunyich is Steven's son, was President of Ideal FSI from 2009 to 2013, and was a
 17

18
 19 ⁸⁴ Doc. 14 at 10:1-37; PX38 at 79:22-80:20, 92:14-17, 142:13-25, 163:9-164:17,
 165:13-166:1; PX38:A at 19; PX39 at 70:16-71:11; PX44 at 28:14-17; PX105 ¶¶ 3-4.

20 ⁸⁵ PX38 at 81:21-25, 82:13-14, 85:1-14.

21 ⁸⁶ PX38 at 86:5-23; 160:15-24; 161:22-162:20; PX38:A at 5.

22 ⁸⁷ PX2 at ¶ 19; PX2:H at 8; PX38 at 92:14-17, 93:14-94:21, 145:14-19; PX38:A at 16;
 23 PX39 at 70:16-71:11; PX44 at 28:14-17.

24 ⁸⁸ PX38 at 96:9-97:20.

25 ⁸⁹ PX38 at 93:18-94:12, 138:3-7; PX44 at 37:20-39:20.

26 ⁹⁰ PX38 at 95:19-96:1-8.

27 ⁹¹ Doc. 14 at 10 at 1-3; Doc. 84 at 20-22, ¶ 59; PX38 at 82:4-14, 163:9-164:20,
 188:8-190:4; PX38:A at 19; PX105 at ¶¶ 3-4.

28 ⁹² PX38 at 147:5-48:8, 178:2-179:25; PX38:A at 8.

1 signer for the shell entity Debt Eliminations Systems, LLC.⁹³ Along with his father, Chris controlled
 2 and participated in many aspects of the Ideal operation.⁹⁴ He recruited signers and straw officers for
 3 the shell companies, managed relationships with Ideal's data providers, signed for merchant
 4 accounts, and directed how Ideal submitted consumer data to processors.⁹⁵ Chris controlled Ideal's
 5 finances as a signatory on several bank accounts,⁹⁶ and he had a once-weekly call with Ideal's
 6 customer service personnel, drafted customer service scripts, and managed Ideal's relationship with
 7 its third-party call center, Focus.⁹⁷

8 Chris did "not doubt" that Ideal made unauthorized charges.⁹⁸ He received regular reports
 9 from Mosher detailing the number of charges consumers reported as unauthorized.⁹⁹ A processor put
 10 him on a terminated merchant list because of Ideal's excessive chargebacks.¹⁰⁰ He also received
 11 reports of complaint calls from Focus, drafted customer service scripts, and participated in weekly
 12 calls with Focus to discuss customer service calls.¹⁰¹ He knew of the "bad trends" in customer
 13 service—by which he meant consumers who reported not authorizing a charge.¹⁰² Finally, he
 14 discussed Ideal's return rates, complaint calls, and high number of refunds with his father and other
 15

16 ⁹³ Doc. 14 at 10:23–24; Doc. 41 at ¶ 6; Doc. 84 at 3, ¶ 7; PX1 at ¶¶ 60, 147; PX1:D at 16, 42,
 17 44; PX1:UU; PX37 at 46:2–5, 51:21–52:10; PX38 at 86:19–21, 112:16–22; PX41 at 46:7–9; PX105
 at ¶¶ 3–4. *See also* Doc. 40-1 at 2.

18 ⁹⁴ Doc. 14 at 10:23–24, 13:21–23; PX40 at 19:25–20:5, 37:7–12, 136:12–16, 178:2–6,
 19 205:2–19; PX41 at 76:12–21, 180:7–21; PX44 at 15:19–25, 31:10–21, 39:7–14; PX105 (Robertson
 Decl.) ¶¶ 3–4.

20 ⁹⁵ PX1 at ¶ 147; PX1:UU; PX37 at 99:21–100:2, 192:22–193:17; PX38 at 86:19–21; PX39 at
 21 94:12–20; PX39:A at 5; PX41 at 180:7–21; PX44 at 20:6–16; 30:14–19, 31:10–13; 39:7–40:9.

22 ⁹⁶ Doc. 84 at 7, ¶ 28; PX1 at ¶¶ 55, 61; PX1:M at 1–27, 37–42, 49–52, 56–57, 60–63, 66–67,
 23 77–78; PX40 at 72:17–20.

24 ⁹⁷ PX37 at 72:1–73:25, 244:5–12; PX40 at 87:19–22; PX41 at 61:9–15, 62:1–4.

25 ⁹⁸ Doc. 14 at 11:7–13; PX37 at 45:9–22; PX105 at ¶¶ 3–4.

26 ⁹⁹ PX37 at 199:1–14; 221:15–23; PX39 70:16–71:11.

27 ¹⁰⁰ PX37 at 135:6–9, 14–17.

28 ¹⁰¹ PX37 at 71:16–73:25; PX40 at 87:19–22.

¹⁰² PX37 at 70:18–24, 71:7–18, 74:22–25.

1 Ideal employees.¹⁰³

2 *c. Jared Mosher*

3 In late 2010, Steven and Chris Sunyich recruited Mosher to help run the business “because of
4 his expertise and understanding of the [payday-loan] industry.”¹⁰⁴ Together, Mosher and the
5 Sunyiches directed Ideal’s scheme from late 2010 through mid-2012.¹⁰⁵ As President of Ascot
6 Crossing, LLC (a company used to front merchant accounts and process transactions) and de facto
7 officer of Ideal FSI, Mosher had significant authority over the Ideal scheme.¹⁰⁶ Mosher also oversaw
8 Bracknell Shore, LLC (which Ideal used as its customer service front during its charging campaigns)
9 during that time.¹⁰⁷ He recruited signers and straw officers for shell companies, decided when Ideal
10 applied for merchant accounts, determined Ideal’s refund policy, reviewed customer-service scripts,
11 and scripted what customer service agents said to complaining consumers.¹⁰⁸ Mosher also negotiated
12 the fees that Ideal paid payment processors, data providers, and Focus;¹⁰⁹ and, along with Brown, he
13 managed the accounting and had final approval over bank transfers.¹¹⁰

14 Mosher knew that Ideal charged consumers without authorization.¹¹¹ He was also aware

17 ¹⁰³ PX37 at 43:15–22; PX38 at 94:9–12, 138:3–7; PX44 at 38:12–25.

18 ¹⁰⁴ PX38 at 54:4–7; 147:5–148:8; PX38:A at 8; PX39 at 22:2–25, 34:11–14, 41:3–42:14,
19 49:14–22.

20 ¹⁰⁵ Doc. 14 at 4:17–19, 13:21–23; PX105 at ¶¶ 3–4.

21 ¹⁰⁶ Doc. 14 at 4:17–19, 10:10–12, 12:6–8, 13:21–23, 15:18–20, 16:2–3; Doc. 84 at 15, ¶ 14;
22 PX1 at ¶¶ 14, 41–44, 80, 92; PX1:W at 3; PX2 at ¶ 15; PX2:G at 1, 3; PX3 at ¶¶ 3, 10–11; PX3:B at
23 1; PX3:I at 2; PX3:J; PX37 at 179:10–11; PX38 at 70:8–11; PX39 at 260:14–20; 73:18–22.

24 ¹⁰⁷ Doc. 84 at 15, ¶ 14; PX1 at ¶¶ 23, 31.

25 ¹⁰⁸ Doc. 84 at 16, 18–19, ¶¶ 23, 47; Doc. 84 at 24–25, ¶¶ 4–13; Doc. 84 at 26–27, ¶¶ 4–11;
26 Doc. 84 at 28–29, ¶¶ 5–12; Doc. 84 at 30, ¶¶ 5–8; PX3 at ¶ 7; PX3:C–F; PX39 at 169:11–170:13;
27 226:18–228:16; 235:11–236–9; PX39:A at 7–10; PX40 at 63:7–14, 66:10–13; 67:1–5.

28 ¹⁰⁹ PX39 at 64:20–23, 66:12–13, 94:12–15, 240:17–19, 287:11–14.

¹¹⁰ PX1 at ¶¶ 55, 80; PX1:M at 21–24; Doc. 84 at 31, ¶¶ 8–9; Doc. 84 at 24, ¶ 10; Doc. 84 at
7, ¶ 28; PX39 at 287:13–14, 63:6–11. *See* Doc. 84 at 24–35.

¹¹¹ Doc. 14 at 14:22–27; PX105 at ¶¶ 3–4.

1 when processors terminated Ideal's merchant accounts for high chargeback and return rates.¹¹² He
 2 created daily reports for Ideal's officers of the various campaigns' return rates.¹¹³ He also knew that
 3 consumers complained of unauthorized charges and "extremely high" percentage demanded
 4 refunds.¹¹⁴ He did nothing, however, to stop the unauthorized charges, claiming that it "wasn't [his]
 5 job to sit there and think about" why consumers complained.¹¹⁵

6 *d. Melissa Sunyich Gardner*

7 Melissa Sunyich Gardner was an officer of Ascot.¹¹⁶ From June 2009 to June 2012, she
 8 submitted more than 20 merchant applications on behalf of the shells.¹¹⁷ She also signed corporate
 9 documents as an officer and communicated with a payment processor about merchant applications
 10 on Ideal's behalf.¹¹⁸ Melissa claims that she did not want to engage in Ideal's daily business and,
 11 thus, did not want to ask too many questions about company matters.¹¹⁹ Nonetheless, she understood
 12 that Ideal needed shells and signers to open new merchant accounts.¹²⁰ She admitted that she signed
 13 necessary merchant account applications and corporate filings even if they contained false
 14 information.¹²¹ Melissa knew that processors routinely terminated Ideal's merchant account
 15 applications for high chargeback and return rates.¹²² She also knew of consumer complaints.¹²³ She

16 ¹¹² PX39 at 195:20–196:18.

17 ¹¹³ PX39 at 70:9–71:11.

18 ¹¹⁴ PX39 at 241:8–17.

19 ¹¹⁵ Doc. 14 at 15:2–5; PX39 at 229:7–8, 230:3–8; 279:23–280:15.

20 ¹¹⁶ Doc. 41 at 3, ¶ 8; PX1 at ¶ 13, 65; PX1:A at 26–28.

21 ¹¹⁷ PX41 at 122:16–25, 131:21–25; 150:25–152:8, 155:5–25, 163:7–164:23, 165:1–166:2,
 22 170:6–171:21, 171:24–175:16; PX41:A at 16–69.

23 ¹¹⁸ PX1 at ¶ 13, 40; PX1:A at 26–28; PX41 at 53:3–54:21.

24 ¹¹⁹ PX41 at 74:3–5.

25 ¹²⁰ PX41 at 31:19–32:12, 33:15–18, 35:5–8, 34:6–9, 37:7–12; 38:7–11.

26 ¹²¹ PX41 at 37:13–38:21, 39:18–42:22; 123:2–125:24.

27 ¹²² PX41 at 45:12–22; 177:23–179:13; PX41:A at 72–73.

28 ¹²³ PX41 at 60:19–61:15 73:1–12; 74:9–12, 75:25–76:8.

discussed Ideal's chargebacks and consumer complaints with other individual defendants.¹²⁴ Melissa stated that Ideal's corporate priorities were avoiding chargebacks and resolving complaints so that merchant accounts would not be shut down.¹²⁵

e. Michael Sunyich

From 2009 to 2012, Michael Sunyich was FSI's Vice President for Customer Retention, its call center manager, and President of Bracknell.¹²⁶ As an officer, he registered Ideal DBAs, including Debt to Wealth and Cash Savers.¹²⁷ Michael also managed Ideal's customer service operations—including its relationship with Focus—for a two-month period.¹²⁸ He monitored agents' calls with complaining consumers, evaluated their performance, and determined which agents deserved commissions.¹²⁹ He received periodic reports detailing the number of consumers requesting refunds.¹³⁰ In June 2012, when speaking to Utah law enforcement with Brown, Michael disavowed any knowledge of Avanix, even though he himself managed aspects of the Avanix campaign by setting up a mail drop for Avanix that only he, Brown, and another Ideal employee could access.¹³¹

Michael knew that consumers complained that they had not authorized Ideal's charges to their accounts.¹³² In 2011 he told his call-center staff not to offer refunds to consumers complaining

¹²⁴ PX41 at 179:4-13.

¹²⁵ PX41 at 74:13-16, 179:4-12.

¹²⁶ PX1 at ¶ 57; PX1:A at 13-14; PX1:F at 5-6; PX40 at 79:12-81:16, 92:12-93:6; PX40:A at 1, 8.

¹²⁷ PX1:B at 4, 25.

¹²⁸ PX37 at 244:5-12; PX38 at 47:21-48:3; PX39 at 100:25-102:5; PX40 at 54:15-55:8, 56:21-24.

¹²⁹ PX40 at 64:18-65:8, 203:21-204:14; 92:12-94:5; PX40:A at 1.

¹³⁰ PX40 at 57:7-58:3, 182:9-10, 183:15-23; PX40:A at 15.

¹³¹ PX6 at ¶¶ 5-10, 12-13; PX6:C.

¹³² PX40 at 63:23-64:20, 65:15-19, 117:9-12; 163:15-17.

about unauthorized charges.¹³³ Additionally, he knew about law enforcement investigations into the Ideal organization's unauthorized charges.¹³⁴ Michael spoke with Brown and Steven Sunyich about the complaints.¹³⁵

III. Discussion

A. The FTC Has Sustained its Burden to Show that the Evidence Supports the Entry of Summary Judgment on the Remaining Individual Defendants' Liability for Violations of Section 5 of the FTC Act Based on Unfair Billing Practices, Deceptive Billing, and Deceptive Statements.

The FTC alleges three counts against the defendants for violations of Section 5 of the FTC Act, which prohibits "unfair . . . acts or practices in or affecting commerce."¹³⁶ The FTC proves liability for an unfair trade practice when "the act or practice causes or is likely to cause substantial injury to consumers [that] is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."¹³⁷ "An injury is reasonably avoidable if consumers 'have reason to anticipate the impending harm and the means to avoid it,' or if consumers were aware of, and are reasonably capable of pursuing, potential avenues toward mitigating the injury after the fact."¹³⁸ A deceptive practice may be inferred from the presence of "high cancellation, refund, and chargeback rates."¹³⁹

I. Count I: unauthorized charges

In Count I, the FTC alleges that the defendants violated the Act with unauthorized charges to

¹³³ PX40 at 92:12–94:5; PX40:A at 1.

¹³⁴ PX6 at ¶¶ 7–10, 12–13.

¹³⁵ PX40 at 160:23–161:7, 163:18–168:12.

¹³⁶ 15 U.S.C. § 45(a); Doc. 32.

¹³⁷ 15 U.S.C. § 45(n); *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012).

¹³⁸ *Davis*, 691 F.3d at 1168–69 (quoting *Orkin Extermining Co, Inc. v. F.T.C.*, 849 F.2d 1354, 1365–66 (11th Cir. 1988)).

¹³⁹ *F.T.C. v. Grant Connect, LLC*, 827 F. Supp. 2d 1199, 1221 (D. Nev. 2011), *vacated in part on other grounds*, 763 F.3d 1094 (9th Cir. 2014).

1 consumer credit cards and bank accounts. Courts regularly find unauthorized billing to be unfair.¹⁴⁰
 2 And taking consumers' funds without authorization causes substantial injury, even when the amount
 3 taken is relatively small.¹⁴¹

4 The evidence in the record demonstrates that the defendants engaged in unfair billing
 5 practices not outweighed by countervailing benefits to consumers or competition. The unauthorized
 6 charges against unwitting consumers' bank accounts and credit cards were plainly substantial; the
 7 evidence reflects tens of millions of dollars were charged to more than a million customers from
 8 2009-2013.¹⁴² And the injury was not avoidable by the consumers; they only learned of the
 9 unwanted charges after their money had been extracted from their accounts. Finally, the consumers'
 10 ability to "pursu[e] potential avenues toward mitigating the injury" was obstructed by Ideal's
 11 customer service staff, who were instructed to push the financial services that the consumers had
 12 "purchased" and avoid refunds or chargebacks.¹⁴³ As the stack of declarations submitted by
 13 aggrieved consumers and the customer-service representatives who fielded the calls from irate
 14 callers demonstrate, many consumers who requested a refund never received one, and those who did
 15 suffered other financial injury like overdraft fees and bounced-check fees.¹⁴⁴ The evidence
 16 overwhelmingly establishes that the Corporate Defendants violated the Act based on unauthorized
 17 charges as alleged in Count I.

18 **2. Counts II & III: false billing and material misrepresentations**

19 In its second and third counts, the FTC alleges that the defendants violated the Act by
 20

21 ¹⁴⁰ *FTC v. Inc21.com*, 745 F. Supp. 2d 975, 1003-05 (N.D. Cal. 2010); *FTC v. J.K.*
 22 *Publications*, 99 F. Supp. 2d 1176, 1203 (C.D. Cal. 2000).

23 ¹⁴¹ *J.K. Publ'ns*, 99 F. Supp.2d at 1201; *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.
 24 1994).

25 ¹⁴² See PX33 at ¶¶ 22, 23(d).

26 ¹⁴³ See, e.g., PX7.

27 ¹⁴⁴ PX7 at ¶¶ 6-7; PX8 at ¶¶ 13-14; PX9 at ¶¶ 3-5, 8; PX10 at ¶¶ 3, 5, 6; PX11 at ¶ 4; PX12
 28 at ¶¶ 3, 10; PX13 at ¶ 4; PX14 at ¶¶ 2-3, 7; PX15 at ¶ 3; PX16 at ¶¶ 2-5; PX17 at ¶¶ 2-3; PX18 at
 ¶¶ 2, 5; PX19 at ¶ 3; PX20 at ¶¶ 3-5; PX21 at ¶¶ 3-4, 6; PX22 at ¶¶ 3-8; PX23 at ¶¶ 4-6; PX24 at
 ¶¶ 3-7; PX25 at ¶¶ 5-7, 16; PX26 at ¶¶ 3-5; PX28 at ¶¶ 2-4; PX29 at ¶¶ 3, 9; PX30 at ¶¶ 8-9; PX31
 at ¶¶ 3-4.

1 material misrepresentations.¹⁴⁵ A representation or omission violates the Act if it “(1) . . . is likely to
 2 mislead consumers acting reasonably under the circumstances (2) in a way that is material.”¹⁴⁶ “To
 3 determine whether a representation, omission, or practice is likely to mislead, the Court considers the
 4 overall net impression the representation creates.”¹⁴⁷

5 The evidence overwhelmingly shows that the defendants, through a common scheme to
 6 defraud, made false and material representations designed to mislead the victims. Victims had their
 7 bank accounts and credit cards charged without their knowledge or consent, and when they called to
 8 question the charges and have them reversed, customer service representatives—on defendants’
 9 instructions or with their full knowledge and intent—falsely told the callers that they had authorized
 10 the charges. They also told the callers that the credit was being processed, which—many
 11 times—was entirely untrue.¹⁴⁸ These representations were plainly part of a system of deceptive
 12 statements on which the defendants collectively intended the victims to rely. And that reliance was
 13 material because it led to a debit from the consumers’ bank accounts or credit card accounts. The
 14 FTC has satisfied its burden to demonstrate that the Corporate Defendants violated Section 5 of the
 15 Act based on false billing and material misrepresentations as alleged in Counts II and III.

16 3. *Individual liability*

17 The evidence also overwhelmingly demonstrates that Steven Sunyich, Chris Sunyich,
 18 Michael Sunyich, Melissa Sunyich Gardner, and Jared Mosher bear individual liability for the
 19 violations. The Ninth Circuit test for individual liability for injunctive and monetary relief under the
 20 Act depends in part on a determination of corporate liability.¹⁴⁹ Here, the lines between the

21
 22 ¹⁴⁵ Doc. 32 at 19.

23 ¹⁴⁶ *F.T.C. v. Cyberspace.com*, 453 F.3d 1196, 1199 (9th Cir. 2006).

24 ¹⁴⁷ *F.T.C. v. Publishers Business Services*, 821 F. Supp. 2d 1205, 1223 (D. Nev. 2010) (citing
 25 *Cyberspace.com*, 453 F.3d at 1200).

26 ¹⁴⁸ PX7 at ¶¶ 6–7; PX8 at ¶¶ 13–14; PX9 at ¶¶ 3–5, 8; PX10 at ¶¶ 3, 5, 6; PX11 at ¶ 4; PX12
 27 at ¶¶ 3, 10; PX13 at ¶ 4; PX14 at ¶¶ 2–3, 7; PX15 at ¶ 3; PX16 at ¶¶ 2–5; PX17 at ¶¶ 2–3; PX18 at
 28 ¶¶ 2, 5; PX19 at ¶ 3; PX20 at ¶¶ 3–5; PX21 at ¶¶ 3–4, 6; PX22 at ¶¶ 3–8; PX23 at ¶¶ 4–6; PX24 at
 ¶¶ 3–7; PX25 at ¶¶ 5–7, 16; PX26 at ¶¶ 3–5; PX28 at ¶¶ 2–4; PX29 at ¶¶ 3, 9; PX30 at ¶¶ 8–9; PX31
 at ¶¶ 3–4.

¹⁴⁹ *See Stefanchick*, 559 F.3d at 931.

1 Corporate Defendants, which were all controlled by these individual defendants, were blurred to the
2 point where they can only be considered a common enterprise.¹⁵⁰

3 *a. Common enterprise*

4 “Where corporate entities operate together as a common enterprise, each may be held liable
5 for the deceptive acts and practices of the others.”¹⁵¹ “[E]ntities constitute a common enterprise
6 when they exhibit either vertical or horizontal commonality—qualities that may be demonstrated by
7 a showing of strongly interdependent economic interests or the pooling of assets and revenues.”¹⁵²
8 Courts evaluate a number of factors when determining whether the schemes in question constitute a
9 common enterprise, including: “common control, sharing of office space and officers, whether
10 business is transacted through a ‘maze of interrelated companies,’ the commingling of corporate
11 funds, unified advertising, and any other evidence revealing that no real distinction existed between
12 the corporate defendants.”¹⁵³ Additionally, an individual who controls an entity found to participate
13 in a common enterprise is also liable for the joint deceptive acts and practices.¹⁵⁴

14 At a minimum, the undisputed material facts establish a common enterprise between Ideal,
15 Ascot, and Bracknell—which individual defendants Steven, Chris, and Michael Sunyich, Melissa
16 Sunyich Gardner, and Jared Mosher controlled. For example, the admissible evidence shows that
17 Ideal formed Ascot Crossing, LLC, as a wholly owned subsidiary of Ideal FSI, and that Ascot shared
18 an office with Ideal FSI and Bracknell.¹⁵⁵ Jared Mosher was President, and Melissa Gardner was an
19
20
21

22 ¹⁵⁰ See *FTC v. Network Servs. Depot Inc.*, 617 F.3d 1127, 1142–43 (9th Cir. 2010) (finding a
23 common enterprise where corporate defendants pooled resources, staff, and funds, were controlled
by the same individuals, and participated in the same deceptive acts).

24 ¹⁵¹ *Grant Connect, LLC*, 763 F.3d at 1105 (citation omitted).

25 ¹⁵² *Network Services Depot, Inc.*, 617 F.3d at 1142–43.

26 ¹⁵³ *F.T.C. v. Neovi, Inc.*, 598 F. Supp. 2d 1104, 1116 (S.D. Cal. 2008) (citations omitted).

27 ¹⁵⁴ See *id.*

28 ¹⁵⁵ PX1 at ¶¶ 23, 35, 45; PX1:D at 36-38; PX37 at 168:8-171:5; PX40 at 127:18-128:10; Doc.
84 at 19, ¶ 51.

officer and signer of Ascot.¹⁵⁶ Mosher oversaw the activities of both Ascot and Bracknell.¹⁵⁷ Ideal used Ascot to front merchant accounts and process charges.¹⁵⁸ For example, defendants charged consumer accounts \$394,000 through an Ascot merchant account with Landmark Clearing for the billing campaign Debt2Wealth.¹⁵⁹ Processors terminated numerous Ascot merchant accounts for high chargeback rates.¹⁶⁰ In addition, Ideal used more than ten Ascot bank accounts to pay Ideal's data providers, payroll, consumer refunds, and other bills.¹⁶¹ Ideal also temporarily placed other shells' revenues in Ascot accounts before transferring to different Ideal accounts.¹⁶² These facts demonstrate a common enterprise between Ideal, Ascot, and Bracknell.

b. Individual control of the common-enterprise entities

"An individual is personally liable for a corporation's FTC Act § 5 violations if he 'participated directly in the acts or practices or had authority to control them' and 'had actual knowledge of material misrepresentations, was recklessly indifferent to the truth or falsity of a misrepresentation, or had an awareness of a high probability of fraud along with an intentional avoidance of the truth.'"¹⁶³ Knowledge is satisfied where, *inter alia*, an individual "had an awareness of a high probability of fraud along with an intentional avoidance of the truth."¹⁶⁴

There is no genuine dispute that Steven Sunyich, Chris Sunyich, Michael Sunyich, Melissa

¹⁵⁶ Doc. 84 at 4–5, ¶¶ 11, 14; Doc. 84 at 14–15; PX3 at ¶ 11; PX3:J; PX37 at 179:9–13; PX39 at 73:11–22.

¹⁵⁷ Doc. 84 at 15 ¶ 14.

¹⁵⁸ PX1 at ¶¶ 14, 41–44, 92, 158; PX1:B at 7, 9–10; PX1:DD; PX1:XX; PX41:A at 1–3, 24–40.

¹⁵⁹ PX1 at ¶¶ 92, 154–158; PX1:DD at 1–2; PX1:XX at 1–2.

¹⁶⁰ PX38 at 188:11–190:2.

¹⁶¹ PX1 at ¶¶ 11, 42–43, 55; PX1:L at 1–3; PX1:M at 19, 21, 23, 43, 58; PX44 at 15:1–6; PX80 at ¶ 7; PX80:K; PX80:L; PX80:R.

¹⁶² PX1 at ¶ 43; PX1:L; PX2 at ¶¶ 16, 18, PX2:H at 9–11.

¹⁶³ *Cyberspace.Com LLC*, 453 F.3d at 1202 (quoting *F.T.C. v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170–71 (9th Cir. 1997)).

¹⁶⁴ *Grant Connect*, 763 F.3d at 1102.

1 Sunyich Gardner, and Jared Mosher had the authority to control these Corporate Defendants. The
2 FTC's admissible evidence on which this court relied in determining the undisputed facts above
3 clearly shows that these individuals had the authority to control them in this scheme and directly
4 participated in their common goal of charging unwitting victims and then attempting to convince
5 them not to have the charges reversed. They therefore had full knowledge of Ideal's unlawful plan
6 and practices. Each signed documents on behalf of these entities, directed customer-service
7 representatives how to respond to inquiries directed to these entities, opened and controlled bank
8 accounts for these entities, and thus had the full ability to control one or more of the Ideal family of
9 companies used to carry out this scheme to defraud victims. And each was fully aware of the
10 massive rate of consumer complaints, chargebacks, return rates, and terminated merchant accounts.

11 The FTC has demonstrated that Steven exercised control over Ideal, which in turn
12 participated in the common enterprise by engaging in unfair billing practices and making deceptive
13 statements. He had the ability to control Ideal and knew of the high chargeback rates. Thus, Steven
14 Sunyich is individually liable for all the violations alleged in the FTC's complaint.

15 The same is true for Chris Sunyich. As Ideal's President, Chris controlled Ideal's finances
16 and participated in numerous aspects of the scheme, including actually drafting call-center scripts
17 rife with false and misleading representations to consumers. Chris received reports detailing the
18 unauthorized charges and discussed Ideal's return rates, complaint calls, and refund rates with Steven
19 and other managers and employees of the common-enterprise entities. The FTC has established that
20 Chris exercised sufficient control over Ideal and its related entities and knew of the
21 misrepresentations being made.

22 The FTC has also demonstrated that Michael was Ideal's Vice President and Bracknell's
23 President. Michael monitored call agents and was responsible for awarding bonuses based on agent
24 performances. He knew the number of consumers who had requested funds, directed his call center
25 staff not to provide refunds, and spoke with Kent Brown regarding consumer complaints. The FTC
26 has come forward with sufficient evidence to show that Michael (1) had the authority to control a
27 participant in the common enterprise, (2) knew of the unlawful activity, and (3) had the authority to
28 stop the activity but did not do so.

1 Similarly, the FTC has come forward with sufficient evidence to show that Melissa Sunyich
 2 Gardner participated in the common enterprise and is individually liable for its violations. Melissa
 3 was an officer of Ascot, a scheme participant, for which she submitted numerous merchant
 4 applications, signed corporate documents, and communicated with third parties on Ideal's behalf.
 5 Although Melissa may have attempted to avoid questions about Ideal's business, she knew that
 6 payment processors routinely terminated Ideal's merchant accounts and submitted corporate
 7 paperwork even when it contained false information. She also knew about consumer complaints and
 8 high chargeback rates, because she discussed them with other individual defendants. As an officer of
 9 Ascot, she had the *de jure* authority to control Ascot's activities. She remained wilfully blind to the
 10 presence of the unfair and deceptive statements and trade practices at issue in this case.

11 Finally, Jared Mosher's individual liability has also been established. The FTC has shown
 12 that he was recruited to help run the common enterprise and directed Ideal's scheme along with
 13 Steven and Chris Sunyich. Mosher was President of Ascot, a participant of the scheme. He
 14 determined when Ideal would apply for merchant accounts, formulated Ideal's refund policy,
 15 reviewed scripts, and told customer service agents what to say to complaining consumers. Mosher
 16 knew Ideal was charging consumers without authorization and that Ideal's merchant accounts were
 17 being terminated for high chargeback rates.

18 With this evidence, the FTC has sustained its burden to show that the Corporate Defendants
 19 committed the Section 5 violations alleged in the complaint and that Steven Sunyich, Chris Sunyich,
 20 Michael Sunyich, Melissa Sunyich Gardner, and Jared Mosher are individually liable for these
 21 violations.¹⁶⁵ The burden thus shifts to the remaining defendants to show with citations to the
 22 evidentiary record that there are genuine issues for trial.¹⁶⁶

23 **B. The Defendants Failed to Sustain their Summary-Judgment Burden.**

24 When the moving party meets its initial burden on a summary judgment motion, the "burden
 25

26 ¹⁶⁵ See, e.g., *F.T.C. v. MacGregor*, 360 Fed. App'x 891, 894–95 (9th Cir. 2009) (individual
 27 awareness of complaints and refund rates demonstrates knowledge or reckless indifference); accord,
 28 *F.T.C. v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1082 (C.D. Cal. 2012).

¹⁶⁶ *Stefanchick*, 559 F.3d at 928.

1 then shifts to the nonmoving party to establish, beyond the pleadings, that there is a genuine issue for
 2 trial.”¹⁶⁷ The nonmoving party “must do more than simply show that there is some metaphysical
 3 doubt as to the material facts.”¹⁶⁸ It may not rely on the mere allegations in the pleadings and instead
 4 “must set forth specific facts showing that there is a genuine issue for trial.”¹⁶⁹ “A genuine dispute
 5 arises if the evidence is such that a reasonable jury could return a verdict for the nonmoving
 6 party.”¹⁷⁰

7 Steven, Chris, Michael, and Melissa responded to the FTC’s motion, but none did so with
 8 any admissible evidence. Jared Mosher filed no response at all. All of the responding defendants are
 9 adamant that the FTC has no evidence of their wrongdoing. Steven and Chris claim that the FTC has
 10 failed to provide evidence of “ONE name of ONE consumer that filed a complaint against the
 11 Defendant or any Enterprise the Defendant was an officer or owner of.”¹⁷¹ But the record is rife with
 12 this evidence because the FTC has offered depositions, declarations, and other admissible evidence
 13 showing that Ideal and the companies that formed the common enterprise and which the responding
 14 defendants directed and controlled were constantly the targets of consumer complaints.¹⁷²
 15 Russell Stevens’s declaration particularly connects the dots. A former Ideal call-center employee
 16 supervised by Steven, Michael, and Chris, Stevens declares that he fielded 50-60 calls each day using
 17 scripts and instructions provided by Michael.¹⁷³ Though he was hired by Ideal, he was paid by
 18 Bracknell Shore, and his job was to tell “each caller about the additional products and programs

20 ¹⁶⁷ *Miller v. Glenn Miller Productions, Inc.*, 454 F.3d 975, 987 (9th Cir. 2006).

21 ¹⁶⁸ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (footnote
 22 omitted).

23 ¹⁶⁹ *Porter v. Cal. Dep’t of Corr.*, 419 F.3d 885, 891 (9th Cir. 2005) (quoting *Anderson v.*
Liberty Lobby, Inc., 477 U.S. 242, 256 (1986)).

24 ¹⁷⁰ *California v. Campbell*, 319 F.3d 1161, 1166 (9th Cir. 2003); *Addisu v. Fred Meyer, Inc.*,
 25 198 F.3d 1130, 1134 (9th Cir. 2000) (“There must be enough doubt for a ‘reasonable trier of fact’ to
 find for plaintiffs in order to defeat the summary judgment motion.”).

26 ¹⁷¹ Docs. 180 at 2; 183 at 2.

27 ¹⁷² *See, e.g.*, PX7; PX8.

28 ¹⁷³ PX8.

provided by Ideal Financial (although [he] never mentioned the company name).”¹⁷⁴ He was instructed to claim he was an employee of any one of the various Ideal companies depending on the product that the caller was calling to complain about:

At times, I answered the telephone and told the caller that I was an agent of Membership Care. Other times . . . a screen on the telephone at my desk indicated what product the consumer was calling about. . . . When the telephone indicated that a consumer was calling about Debt 2 Wealth, I answered as an employee of Debt 2 Wealth, and the same for other products, such as Easy Loan Protection or Payday Loan Protection.¹⁷⁵

He also “told each caller about the additional products and programs provided by Ideal Financial (although [he] never mentioned the company name), including a membership called Ideal Goodness . . .”¹⁷⁶ Stevens declares that, although he took 50-60 calls a day by the end of his time at the company, “no callers with whom [he] spoke believed that they had authorized the charges that they called about.”¹⁷⁷ The FTC has provided declarations from consumers who claim to have been wrongfully billed for “Membership Care,”¹⁷⁸ EZ Loan Protection,¹⁷⁹ and Debt 2 Wealth¹⁸⁰ charges. None of the responding defendants rebuts Stevens’s sworn statements. In sum, no defendant has satisfied his or her burden to demonstrate the existence of a genuine issue of fact for trial. The FTC is therefore entitled to summary judgment on the remaining defendants’ liability for the FTC Act violations alleged in its complaint.

C. No Summary Judgment on Requested Relief

The FTC has not, however, demonstrated its entitlement to summary judgment on the relief it seeks. The FTC asserts that, according to the business records of the common enterprise, the total

¹⁷⁴ *Id.* at 4.

¹⁷⁵ *Id.* at 2.

¹⁷⁶ *Id.* at 4.

¹⁷⁷ *Id.* at 2.

¹⁷⁸ *See* PX12; PX17; PX22.

¹⁷⁹ *See* PX26.

¹⁸⁰ *See* PX13; PX14; PX26.

1 sum unlawfully extracted from consumers through the defendants' scheme exceeded \$43 million.¹⁸¹
 2 The FTC requests I "convert the Receiver into a liquidating receiver and order it to wind down Ideal,
 3 liquidate its assets, and pay net assets to the FTC for partial satisfaction for the redress owed to
 4 Ideal's victims." *Id.* In calculating these damages, the FTC relies heavily on the work of expert Lisa
 5 T. Wilhelm, whose opinions are summarized in her "Updated Expert Report" attached to the FTC's
 6 motion.¹⁸² But as explained *supra* at page 5, Wilhelm's opinions are not sworn under penalty of
 7 perjury. I therefore decline to consider them. So, although I find that the FTC has sustained its
 8 burden to demonstrate the remaining defendants' liability for the FTC Act violations it alleges, the
 9 amount of their monetary liability has not been sufficiently established.

10 For this reason, I also decline to grant permanent equitable relief based on the FTC's
 11 summary-judgment submission. The Act authorizes a permanent injunction when a defendant
 12 violates the Commission's laws and will likely continue to do so.¹⁸³ To assess the likelihood of
 13 future similar violations, a court looks to (1) the deliberateness and seriousness of the present
 14 violation and (2) the defendant's past record with the violation in question.¹⁸⁴ The court must look to
 15 the "circumstances as a whole and not the presence or absence of any single factor"; "the more
 16 egregious the facts with respect to a particular element, the less important it is that another negative
 17 factor be present."¹⁸⁵

18 The FTC's argument for a permanent injunction is heavily based on its assertion that the
 19 defendants attempted to steal approximately \$82 million dollars from 1.5 million consumers.¹⁸⁶
 20 While there is ample evidence of defendants' culpability for the other portions of the scheme—such
 21 as defendants' opening of numerous shell entities, the high chargeback rates, and terminated
 22 merchant accounts—the severity of these factors, and by extension the scope of the injunctive relief

23 ¹⁸¹ Doc. 170 at 70.

24 ¹⁸² PX34.

25 ¹⁸³ *F.T.C. v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982); *F.T.C. v. Evans Products*
 26 *Co.*, 775 F.2d 1084, 1086–87 (9th Cir. 1985) (citing cases).

27 ¹⁸⁴ *Sears, Roebuck and Co. v. F.T.C.*, 676 F.2d 385, 392 (9th Cir. 1982).

28 ¹⁸⁵ *Id.*

¹⁸⁶ Doc. 170 at 67.

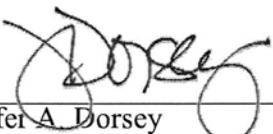
the FTC should be given, is inextricably linked to the amount of money actually accounted for in the scheme. Because I have excluded Wilhelm's report, I lack sufficient admissible evidence of the total magnitude of defendants' actions to fashion the appropriate remedy. Accordingly, I decline to enter summary judgment on this or any other element of relief.

Conclusion

Accordingly, IT IS HEREBY ORDERED that the FTC's Motion for Summary Judgment [Doc. 170] is **GRANTED in part and DENIED in part** as follows:

1. It is **GRANTED** as to defendants Steven Sunyich, Chris Sunyich, Michael Sunyich, Melissa Sunyich Gardner, and Jared Mosher's liability for the violations outlined in the FTC's Amended Complaint (Doc. 32);
2. It is **DENIED AS MOOT** as to Kent Brown and Shawn Sunyich (because consent judgments have already been entered against them) and as to the Corporate Defendants Ideal Financial Solutions, Inc., Ascot Crossing, LLC, Bracknell Shore, Ltd., Chandon Group, Inc., Fiscal Fitness, LLC, and Avanix, LLC, (because the clerk has entered defaults against them, establishing their liability). Any judgment against the now-defaulted Corporate Defendants should be sought under Rule 55;
3. It is **DENIED as to the FTC's request for remedies**. Should the FTC believe it has sufficient admissible evidence that it can properly present to support the entry of summary judgment on the remedies it seeks, it has 30 days to file a motion for summary judgment on these remaining aspects of its claims.

DATED June 29, 2015


 Jennifer A. Dorsey
 United States District Judge